

1 **BEFORE THE FEDERAL COMMUNICATIONS COMMISSION**

FEDERAL-STATE JOINT BOARD ON JURISDICTIONAL SEPARATIONS)))	
COMMENTS ON COMMUNICATIONS ASSISTANCE FOR LAW ENFORCEMENT ACT (CALEA) ISSUES))))))))	CC Docket No. 80-286 ET Docket No. 04-295

2

3 **COMMENTS FROM ATLAS TELPHONE COMPANY, CENTRAL**
4 **TELEPHONE COMPANY, CHEROKEE TELEPHONE COMPANY,**
5 **HINTON TELEPHONE COMPANY, MEDICINE PARK TELEPHONE**
6 **COMPANY AND OKLAHOMA WESTERN TELEPHONE COMPANY**

7 The parties listed above are certified, rural, independent local exchange
8 carriers operating study areas within the state of Oklahoma (commenting
9 parties). These carriers are filing comments with regards to the FCC's
10 request for separations treatment of Communications Assistance for Law
11 Enforcement Agencies (CALEA) implementation and recurring costs for Law
12 Enforcement Agencies (LEA) intercepts. The commenting parties believe
13 that all costs incurred to meet CALEA requirements made after January 1,
14 1995, not recovered through Section 109 of CALEA, be recovered through
15 existing rules, subject to Commission review. States that have addressed

1 cost recovery of implementing CALEA should maintain the existing
2 separations factors used for cost recovery.¹

3

4 **CALEA Implementation Costs Should Be Recovered Through Existing Cost**
5 **Recovery Mechanisms**

6 The majority of CALEA-related implementation costs are switch and
7 transmission related. In essence, the punch list and J-Standard hardware
8 and software requirements are born by the ILEC from their respective switch
9 vendors. This is not the exclusive costs of CALEA implementation, but the
10 most significant portion of such implementation. Most of the hardware is
11 based on existing vendor architecture, engineered through the switch
12 manufacturer, to accommodate and comport to CALEA requirements,
13 through licensed software. Those associated costs perform functions that are
14 either switch related or a combination of switch and transmission related
15 functions, in which case, such costs could be coded in existing Part 32
16 accounts, for both circuit-switched and packet switched hardware and stored
17 program control costs.² In addition to coded accounts, these costs can also be
18 identified through internal records and categorized into existing cost
19 categories for switching and transmission. Several states have implemented
20 universal service funds as a recovery mechanism. In Oklahoma, carriers are

¹ CC Docket 80-286 (FCC 01-126), May 22, 2001.

² 47 C.F.R. Part 32 § 32.2212 and § 32.2232.

1 permitted to recover the intrastate portion of their actual CALEA-related
2 costs through the OUSF (Oklahoma Universal Service Fund), in a one-time
3 payment. The residual interstate portions of those actual costs are recovered
4 through existing access and High Cost USF mechanisms, based on frozen
5 separations factors.

6

7 Since these costs can be accounted for, categorized and separated based on
8 existing rules, there is no need to provide special treatment of allocation
9 factors for CALEA costs, during the separations freeze and after the freeze is
10 lifted. For revenues received from LEA's for CALEA implementation, such
11 revenues should be accounted for on the same basis as the associated
12 allocation of costs, where appropriate. Since these costs are not related to
13 intercept specific requests but CALEA intercept capabilities, no usage factors
14 would pertain. There would be no reason to create a forecast of such usage
15 factors based on actual or maximum intercepts, since the allocation of such
16 costs, for those states that have dealt with CALEA cost recovery, already
17 have determined allocation factors for such costs.

18

19 The Commission should allow carriers in states that have dealt with
20 intrastate CALEA cost recovery, to continue recovering such costs based on
21 existing rules. In such cases, there is no need to address the issue of

1 jurisdictional direct assignment. To force those same carriers to directly
2 assign these costs, rather than allocate them based on frozen factors, would
3 be to abrogate the state's authority in dealing with those costs as well as to
4 create a cost and administrative burden on those carriers to revise multiple
5 cost studies and subsequent adjustments between jurisdictions.

6
7 The commenting parties believe that the Commission may implement the
8 ability to directly assign CALEA-related costs to the interstate jurisdiction
9 for carriers in states where no such provisions of cost recovery have been
10 implemented. But there is no need to reverse the jurisdictional separation of
11 costs for those carriers who have such cost recovery mechanisms in their
12 respective states. A potential concern with existing rules, with regard to
13 jurisdictional direct assignment, is the limitation of allowable categories for
14 direct assignment of such costs.³ However, the Commission has also opened
15 the issue of direct assignment up in its separations reform NPRM ⁴. The
16 issue of direct assignment limitations, where applicable, can be addressed
17 through the existing separations reform proceedings.

18 **Incremental CALEA Provisioning Costs Should Be Assigned to Interstate**
19 **and Recovered Through Recurring Charges**

³ Part 36 rules do not allow direct assignment of joint costs for central office equipment, for example, except for Category 2 – Tandem Switching.

⁴ CC Docket 86-286, Released October 1997, ¶ 75.

1 Once a carrier has implemented CALEA requirements in their network, there
2 are recurring costs associated with completing LEA intercept requests. If the
3 LEA has obtained the proper court authorization for call data collection or
4 call detail and content collection, the LEA contacts the carrier so the carrier
5 can identify the required subscriber for monitoring. The carrier is required to
6 provision for the type of monitoring analysis and the way in which the LEA
7 will collect the content and data from the carrier's intercept access point
8 (IAP). The LEA could require the carrier to provide the call data information
9 over in-band, dedicated facilities or over the CCS7 links while the call content
10 may be over one or more dedicated DS0's. The carrier's authorized agent will
11 be responsible for setting up all the proper J-Server settings and associated
12 facilities for the delivery of the information to the requesting LEA. In the
13 case of data collection over dedicated facilities, the call data and content
14 connections will take up two circuits in the carrier's inter-toll network. If the
15 call data is collected over CCS7 links, then a portion of this link as well as at
16 least one DS0 channel would be dedicated for the intercept. The intercept
17 could last for many days and perhaps weeks. The Administrative Office of
18 the United States Courts has reported that the average length for LEA
19 intercepts in 2003 to be twenty-nine days.⁵ For intercept-related recurring
20 costs, those costs should also be accounted and categorized on existing rules.
21 The costs should be directly assigned to the interstate jurisdiction. The

⁵ Report of the Director of the Administrative Office of the United States on Applications for Orders Authorizing or Approving the Interception of Wire, Oral or Electronic Communications, April 30, 2004, page 8.

1 associated revenue for such costs would also be interstate revenue, and is
2 non-existent today, since the federal government does currently reimburse for
3 these costs. Recurring costs should be directly assigned to the interstate
4 jurisdiction because: (1) states have not addressed these costs, (2) the costs
5 are due to federal mandate, regardless of the LEA jurisdiction, (3) the
6 administrative cost of developing and maintaining rate structures through
7 NECA, rather than through individual telephone companies reduces
8 administrative costs and (4) directly assigning these costs eliminates the
9 question of jurisdictional usage issues.

10

11 In the Commission's Notice of Proposed Rule-Making and Declaratory Ruling,
12 released in August 2004, comments were requested for the cost recovery of
13 not only the capital expenditures of provisioning CALEA capabilities, but also
14 the issue of recovering recurring intercept-related CALEA costs.⁶ This issue
15 relates to not only the jurisdictional separation of such costs, but also the
16 development of rates based on jurisdictional costs. This is beyond the scope
17 of separations but cannot be ignored in dealing with the issue of
18 jurisdictionally separating these costs. If the Commission determines that
19 carriers may charge LEA's for the recurring intercept-related costs, existing
20 separations rules and company records are adequate for providing sufficient
21 cost data in the development of such rates. There is no need for the

⁶ ET Docket No. 04-295, ¶ 132-135.

1 development of new categories or accounts to accomplish this task. As of
2 now, the Commission's rules already provide methodologies for rate
3 development for interstate functions that are not identified through Part 36
4 categorization or Part 32 accounting.

5 **Summary**

6 The Commission should allow states that have already addressed the
7 intrastate portion of CALEA costs to continue their existing mechanisms.
8 Carriers operating in states that have not addressed CALEA cost recovery
9 should be allowed direct assignment of those costs to the interstate
10 jurisdiction, subject to review of the Commission's rules. The cost carriers
11 incur to implement CALEA in those states where cost recovery mechanisms
12 are available, should allocate costs and revenues based on existing frozen
13 separations factors. Recurring intercept costs should be directly assigned to
14 the interstate jurisdiction for rate making purposes.

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16 Respectfully submitted by:

17 _____/s/

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